IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 5045 of 2006

Date of decision: 28.09.2006

Naranjan Singh

..... Petitioner.

Versus

Dharamjit Singh Chhokar

..... Respondent.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. R.S. Chauhan Advocate
for the petitioner.

Mr. Chetan Mittal,Advocate
for the respondent.

P.S. PATWALIA, J. (ORAL)

The present revision petition has been filed challenging the order dated 07.09.2006 passed by learned Civil Judge (Senior Division), Nawanshahr, vide which an application filed under Order 9 Rule 13 of the Code of Civil Procedure for setting aside the ex-parte ejectment order passed under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (herein after referred to as 'the Act') was dismissed.

The facts as emerge from the pleadings of the parties and the orders made by the courts below are that the respondent, who is not residing

in India, had filed a petition under Section 13-B of the Act seeking eviction of the petitioner-tenant from a shop situated in the area of Railway Road, Banga, Tehsil and District Nawanshahr. In the said petition, the petitioner-tenant appeared through his counsel on the first date of hearing and thereafter the case was adjourned to 06.11.2003, 02.12.2003 and 09.12.2003. Thereafter on 11.12.2003 the petitioner-tenant was proceeded against ex-parte. Thereafter nine opportunities were granted to the landlord and it is only on 23.03.2004 after three months of the passing of the ex-parte order that case was decided ex-parte against the tenant. The petition was allowed and the petitioner-tenant was directed to hand over the possession of the shop to the landlord within two months of the date of the order.

The petitioner challenged the aforementioned order by filing an appeal before the Appellate Authority. The landlord thereafter filed a petition seeking execution of the eviction order on 16.07.2004. In the said execution objections were filed by the petitioner but the same were ultimately dismissed by the Rent Controller on 18.01.2005. Against the order of dismissal of objections, the petitioner again filed an appeal before the Appellate Authority which was also dismissed on 31.03.2005. Against the orders vide which his objections was dismissed and the appeal against the same were dismissed, the petitioner- tenant then filed a civil revision in this court bearing C.R. No. 1805 of 2005. During the aforementioned proceedings, the possession of the petitioner-tenant was protected by the Court, as a result of which, he continued in possession of the demised premises. This said revision petition ultimately came up before this Court when the appeal filed by the petitioner challenging the order passed by

Rent Controller in the petition under Section 13-B of the Act dated 23.03.2004 was still pending before the Appellate Authority. However, the said revision petition was dismissed on 31.03.2005 with the following order:-

> "Present:- Mr. R.K. Joshi, Advocate for the petitioner.
>
> Learned counsel for the petitioner submits that the case was pending in the Court of Ms.Sabina, who was Additional District Judge. After her transfer from Nawanshahr on promotion, no new incumbent has taken over in her place.
>
> Learned counsel for the petitioner submits that the dispossession of the petitioner be stayed or the case be transferred to some other Court who may hear the matter
>
> If the petitioner wants the transfer of this case, he can move the Court of District Judge, Jalandhar in the first instance.
>
> No merit.
>
> Dismissed.
>
> Dated: 31.03.2005 Sd/-
> S.N. Aggarwal,
> Judge"

It is the admitted position before this court by both the learned counsel for the parties that the aforementioned appeal filed by the petitioner-tenant against the order of eviction was also dismissed. After dismissal of the appeal, the petitioner- tenant then filed civil revision petition No.1997 of 2005 in this court now taking a plea that actually

appeal against the order of the Rent Controller was not maintainable and therefore he should be permitted to assail the order of the Rent Controller in this Court. A separate application was moved seeking condonation of delay in filing the revision petition. On 01.03.2006 the said revision petition was also dismissed as withdrawn with liberty to file an application before the Rent Controller praying for setting aside the ex-parte ejectment order. The order passed by this Court reads as hereunder:-

> "Present: Mr. Sudip Mahajan, Advocate
> for the petitioner.
>
> Mr. Chetan Mittal, Advocate,
> for the respondent.
>
> Counsel for the petitioner, on instructions from the petitioner, state that the petitioner may be permitted to withdraw this revision petition with liberty to file an application for setting aside the ex-parte ejectment order before the Rent Controller.
>
> Dismissed as withdrawn with the aforesaid liberty. However, if any such application is filed before the Rent Controller, it will be open for the respondent to raise all the points to contest the application, which shall be disposed of by the Rent Controller expeditiously, preferably within a period of six months.
>
> March, 01, 2006 Sd/-
> ndj (Satish Kumar Mittal)
> Judge"

It is thereafter that an application under Order 9 Rule 13 of the Code of Civil Procedure was filed by the petitioner for setting aside the ex-

parte ejectment order dated 23.03.2004.

The case set up in the application was that the petitioner- tenant had engaged one Mr. Harmesh Banga, Advocate to appear on his behalf in the said ejectment petition. Mr. Banga had appeared on the first date of hearing but then had stopped appearing. According to the petitioner- tenant, it is only on account of this lapse on the part of his counsel that he was proceeded against ex-parte. It was also averred that he has already made a complaint against the Advocate before the Bar Council of Punjab and Haryana High Court, Chandigarh in that regard. He further states that he had also paid a sum of Rs.21,500/- to his counsel to be deposited as arrears of rent and also to file an application seeking leave to contest from the Rent Controller. It was stated that he should not be allowed to suffer on the fault of his counsel. The petitioner therefore prayed for setting aside of ex-parte order of dated 23.03.2004. The landlord contested the application stating therein that the allegations made by the tenant were frivolous, wrong and false. The allegations of mis-conduct against the learned counsel were also false. It was stated that the tenant had created a false ground for setting aside the ex-parte order. The aforesaid allegations had not been pressed in to service before the High Court in the earlier revision petition filed by the petitioner against the dismissal of his objections filed in the execution proceedings.

The Rent Controller framed issues before deciding the application which inter-alia were as to whether or not the averments made by the petitioner constituted, a sufficient ground for setting aside the ejectment order and whether the application was time barred. Evidence was

led by the parties in support of their respective claims.

After considering the arguments advanced by the parties, the learned Rent Controller ultimately concluded that the contention of the applicant that he had engaged a counsel and gave him money to tender rent in the Court, was not worthy of acceptance. The plea stood belied for the reason that in a petition under Section 13-B of the Act no tender of rent was to be made. Secondly the tenant had been contesting the claims/ petitions filed by the landlord from time to time. On earlier occasion, he had himself appeared in the court and had tendered rent without engaging any counsel. The petitioner's aforesaid plea had been rejected by the Rent Controller with the following observations:-

> "The contention of the applicant is that he engaged counsel and gave him amount to tender the rent in the court, but the counsel did not appear intentionally and did not tender the rent, is not tenable, as the record shows that the present applicant Niranjan Singh has been contesting the claims/petitions filed by the landlords from time to time. He himself has filed on record the copy of the judgments and statement Ex.PA to Ex.PE. Perusal of the order passed by the court of Sh. Bachan Singh, Rent Controller dated 21.2.1968 shows that Naranjan Singh himself was present and tendered rent, without engaging any counsel and the case was disposed of. Similarly, as per the order passed on 22.5.1968 by Sh. J.R. Gupta, Rent Controller, shows that Naranjan Singh himself was present and gave the statement in the court tendering the rent. Similar is the case, in a order

> passed by the court of Sh. J.R. Gupta on 4.6.1968 and 23.7.1969, which shows that respondent Naranjan Singh remained himself present and tendered rent without engaging any counsel. Appeal was filed by Malkiat Singh against the present applicant Naranjan Singh before the court of Sh. R.K. Singhal on 18.05.1978 against the judgment and decree passed by the Court of Sh.M.L. Malhotra dated 7.5.1979, this appeal also shows that the respondent Naranjan Singh himself contested the appeal and he did not engage any counsel. This shows that the applicant Naranjan Singh is vigilant enough and has full knowledge about the law and procedure, as he himself remained contesting the petitions filed by landlords in the courts. Therefore, his contention that his counsel did not tender the rent and did not file reply, cannot be presumed to be bona fide mistake of the applicant."

Still further the Rent Controller found that the petitioner was neither a rustic villager nor an illiterate person and he appeared to be well versed with the law and procedure. He had been contesting the cases himself from time to time and even had been coming to the courts since 1968. The relevant observations in that regard are as under:-

> "But in the present appeal, as discussed above, the applicant is neither rustic villager, nor a illiterate person, as he himself is aware of the law and procedure. He has been contesting the cases by himself from time to time and he has been coming to the courts since 1968 and he might be knowing fully, well, as

> to which advocate is good and can contest his case well, as he has been coming to the courts, which is clear from the judgments produced by the applicant himself in the court. More so, in the petition under section 13-B, no rent was demanded by the respondent. There is a specific plea in para no.3 of petition under Section 13-B that the petitioner reserve his right to recover arrears of rent and interest with effect from 1.8.1984 up to date from the respondent, by a separate petition. This clearly show that no rent was demanded in this case. As discussed above, the applicant Naranjan Singh is well aware about the petitions, in which rent is demanded, as he used to tender the rent in the court from time to time. He was duly served, as admitted by him in his cross examination, therefore, it cannot be presumed that a person, who is well aware about the procedure and the law, would pay the amount to the counsel for tendering the rent in the court, when no rent was demanded by the petitioners."

I find no reason to disturb these findings recorded by the Rent Controller. Rather I am also left with an impression that the petitioner-tenant very well knew about the pendency of the petition under section 13-B of the Act. However for the reasons best known to him, he avoided the court proceedings and thereafter left no stone unturned to postpone and delay the delivery of the possession of property to the landlord. Therefore, I do not find any error in the order passed by the Rent Controller dismissing the application filed under Order 9 Rule 13 of the Code of Civil Procedure.

Not with standing the aforesaid findings, I also asked the learned counsel for the petitioner to address this court as to the validity or otherwise of the original order passed by the Rent Controller under Section 13-B of the Act. To assail the said order, the learned counsel for the petitioner has raised two contentions. Firstly he states that the landlord had not permanently returned to India. A perusal of the address given by him in the head note of the petition shows that he is still residing in United Kingdom. Thus, the learned counsel submits that since the landlord has not permanently returned to India, he is not entitled to apply under Section 13-B of the Act. I find no merit in this contention and rather the legal position in this regard is settled against the petitioner by the Hon'ble Supreme Court of India in **Baldev Singh Bajwa v. Monish Saini (SC) 2005(2) RCR 470.** It has been held therefore that there is no requirement of law that to be eligible to apply under Section 13-B of the Act an NRI landlord has to permanently return to or settle in India. The NRI can require the accommodation for expansion of his business or for his temporary stay as well. Thus, it was held that the word "return to India" does not denote return to India permanently. The relevant observations of the Hon'ble Supreme Court are as hereunder:-

> "When we read Section 13-B along with the definition of the NRI it is apparent that the person who is a permanently residing outside India can also claim possession under Section 13-B of the Act. All that is required under Section 13-B is that

> a NRI should return to India and claim the premises for his/her use or for the use of any dependent ordinarily living with him. There is no requirement that he has permanently settled in India on his return or he has returned to India with an intention to permanently settle in India. A NRI may require the accommodation for expansion of his business which he is carrying on in other country or require the accommodation for his temporary stay. Under Section 13-B, a NRI can also claim ejectment of the tenant from the premises for the purposes of any other person who is dependent on him and is ordinarily living with him, which makes it clear that although a NRI resides permanently in other country, he could get the accommodation vacated for the need of his dependent who ordinarily lives with him and he intends to come to India, choosing it to be his permanent abode. We do not find any substance in the submissions made by the learned counsel that the words "return to India" under Section 13-B of the Act denote return to India permanently."

Thus in view of the settled position of law as aforementioned, there is no merit in this contention.

Learned counsel for the petitioner then contends that in the present case, the landlord is only a co-owner of the property. Therefore, being a co-owner, he could not have filed a petition under Section 13-B of the Act. This proposition of law has also been examined by a learned Single

Judge in **Assa Singh v. Charanjiv Singh Gulati, 2005(1) PLR 608** where again it was held that a non resident Indian even if he is a co-owner of the property, can file a petition under Section 13-B of the Act. The relevant observations of the Court are as hereunder:-

> "In this way, admittedly, Charanjiv Singh Gulati was proved to be the co-owner thereof to the extent of one-sixth share. In Smt. Kanta Goel's case (supra) it has been held by their Lordship of the Supreme Court that co-owner is as much an owner of the entire property as any sole owner of the property is. It is not correct to say that a co-owner of a property is not its owner. It cannot be said that he is only a part owner or a fractional owner thereof. On the same analogy it can safely be contended that the landlord-respondent in the present case was the owner of the shop in question and was competent to move an application under Section 13-B of the Act to seek eviction of the tenant-petitioner."

Even apart from this, the Hon'ble Supreme Court in **Mohinder Prasad Jain v. Manohar Lal Jain AIR 2006 SC 1471** has held that a petition for eviction can be filed by any one of the co-owners and he need not show consent of other co-owners. Therefore, I do not find any merit in this contention raised by the petitioner also.

In fact the very object of introducing Section 13-B in the Act is to give a right to a non-resident Indian to get one residential or scheduled building or non residential building vacated in his life time and if he

chooses to exercise the said right in the building where he is a co-owner, he cannot be debarred or stopped from doing so. He has been given the right to seek eviction from one building during his life time. He can exercise the said right even if he is only a co-owner. I, therefore, find no merit in this contention as well.

Therefore even on merits, I find that the landlord was entitled to get the shop vacated under Section 13-B of the Act and the order dated 23.03.2004 suffers from no illegality.

At this stage, learned counsel for the petitioner states that he should be granted some reasonable time to vacate the shop. Mr. Mittal states that his client can agree to grant him even up to six months subject to the petitioner undertaking that he would hand over the vacant possession of the shop to the landlord before the Executing Court. Learned counsel for the petitioner has no objection to this. In these circumstances, the petitioner is granted six months time to hand over the vacant possession of the shop to the landlord. The vacant possession of the shop would be handed over to the respondent- landlord on 31.03.2007 by the petitioner before the Executing Court. The petitioner would file a written undertaking that he would hand over the vacant possession of the shop to the land lord on 31.03.2007 before the Executing Court. Let this undertaking be filed within three weeks. In case the same is done, the petitioner would be granted time up to 31.03.2007 to hand over the vacant possession to the landlord.

This revision petition is dismissed subject to the observations made above.

September 28, 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**